

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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METRO FUEL, LLC,

Plaintiff,

No. 07 Civ. 8244 (PAC) (DF)

- against -

CITY OF NEW YORK,

Defendant.

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DECLARATION OF RICHARD BASS

Richard Bass declares, under penalty of perjury, pursuant to 28 U.S.C. § 1746,
that the following is true and correct:

1. I am a Senior Real Estate Analyst at Herrick, Feinstein LLP.
2. I have been a licensed professional planner for over three decades. I was the Planning Director of the Manhattan Borough President's Office, of Jersey City, and of the City of Coral Gables. I am an adjunct professor of Urban Planning at Hunter College and previously taught Urban Planning at Columbia University for seven years.
3. At the request of plaintiff Metro Fuel LLC, I prepared a zoning analysis of the bus shelters and newsstands in New York City bearing advertising signs. The purpose of the analysis was to determine whether the bus shelters and newsstands bearing advertising signs are located in zoning districts in which such signage is permissible. My student, Orlando Rodriguez, analyzed the data under my supervision. Because zoning districts technically do not include the sidewalks, we analyzed the building lots adjacent to each bus shelter or newsstand.
4. To perform this analysis, we used lists of bus shelters and newsstands that

were produced by the City during discovery in this case. For bus shelters, we used a list emailed to plaintiff's counsel on May 27, 2008, which the City indicated was current as of December 2007, entitled "Copy of Shelters in Service.xls - (Legal 1998641).XLS." For newsstands, we used two documents produced by the City: a list of newsstands to be replaced in spring 2008 (Bates stamped NYC018700-NYC018701) and a list of newsstands replaced as of February 8, 2008 (Bates stamped NYC018888).¹

5. There are approximately 3092 bus shelters in the City (as of December 2007). Our analysis demonstrates that — with the exception of just a few shelters citywide — the advertising signs on virtually every bus shelter in the City violate the restrictions on advertising signs set forth in the Zoning Resolution. Indeed, the City has placed hundreds of bus shelters bearing advertising signs in residential districts, where advertising signage is least appropriate.

6. Similarly, by the spring of 2008, Cemusa had installed 86 newsstands bearing advertising signs. Of those 86 newsstands, 79 of them violate the restrictions on advertising signs set forth in the Zoning Resolution

A. Bus Shelters in Manhattan

7. There are approximately 654 bus shelters in Manhattan (according to the list produced by the City), 573 of which are readily classifiable.² Of the 573 readily classifiable

¹ The older newsstands that pre-date the 2006 street furniture franchise do not bear advertising signs. Accordingly, for newsstands, we only analyzed the new replacement newsstands, all of which do bear advertising signs.

² The best way to determine the zoning district for a street furniture structure is to use longitude/latitude data. Although the bus shelter list provided by the City does not contain such data, we were able to independently obtain a list of bus stops that does contain such data. However, the locations listed on the bus shelter list did not always match the locations listed on the bus stop list. Accordingly, we limited our analysis to those bus shelters on

shelters, only two shelters are located in those districts that permit internally illuminated advertising signs such as the signs on the City's bus shelters. The City's Zoning Resolution provides that internally illuminated advertising signs are only permitted in C6-5, C6-7, and C7 districts. Z.R. §§ 32-63; 32-644. Thus, nearly every bus shelter in Manhattan would be illegal if the City subjected its street furniture signs to the restrictions on advertising signs set forth in the Zoning Resolution.

8. Of those 573 bus shelters in Manhattan, approximately 143 are located in residential districts where all advertising signage is impermissible. Z.R. § 22-30 *et seq.* An additional 426 are located in those commercial districts where all advertising signage is impermissible. Z.R. §§ 32-62, 32-63. One sign is located in a manufacturing district where advertising is permitted, but internally-illuminated advertising signage, such as that on the bus shelters, is impermissible. Z.R. §§ 42-52, 42-533. The remainder of the shelters are in unzoned areas, such as parks.

B. Bus Shelters in Brooklyn, Queens, the Bronx, and Staten Island

9. There are approximately 187 bus shelters on Staten Island, 153 of which are readily classifiable. Of the 153 readily classifiable shelters, none are located in those districts (C6-5, C6-7, and C7) that permit internally illuminated advertising signs such as the signs on the City's bus shelters. The vast majority (125) are located in residential and commercial districts where all advertising signage is impermissible. Z.R. §§ 32-62, 32-63, 22-30 *et seq.* Approximately 20 bus shelters are located in manufacturing or commercial districts where advertising is permitted, but internally-illuminated advertising signage, such as that on the bus

the City's list (almost 90% of them) for which we were able to confirm longitude/latitude data.

shelters, is impermissible. Z.R. §§ 32-645, 42-533. The remainder of the shelters are in unzoned areas, such as parks.

10. For the other boroughs, namely Queens, Brooklyn, and the Bronx, there are virtually no bus shelters in districts that permit internally illuminated advertising signage. Indeed, this is unsurprising because there are no C6-5 or C6-7 districts outside of Manhattan, and the only districts that permit internally illuminated advertising signage outside Manhattan are C7 districts, which are amusement parks, such as Coney Island. Furthermore, the vast majority of the shelters in Queens, Brooklyn, and the Bronx are in districts where no advertising at all (illuminated or not) is permitted.

C. Newsstands in Manhattan

11. Of the seventy newsstands bearing advertising signs that the City had installed in Manhattan by the spring of 2008, only seven are located in districts that permit internally illuminated advertising signs such as those on the newsstands.

12. Approximately four newsstands are located in residential districts where all advertising signage is impermissible. An additional 51 are located in those commercial districts where all advertising signage is impermissible. Six signs are located in a manufacturing district where advertising is permitted, but internally-illuminated advertising signage, such as that on the newsstands, is impermissible. The remainder of the newsstands are in unzoned areas, such as parks.

D. Newsstands in Brooklyn, Queens, the Bronx, and Staten Island

13. The City installed sixteen newsstands bearing advertising signs in the

outer boroughs by the spring of 2008. None of these newsstands is located in districts that permit internally illuminated advertising signs. Two are in residential districts where all advertising signage is impermissible. The remainder are in the types of commercial districts where all advertising signage is impermissible.

Dated: July 25, 2008
New York, NY



RICHARD BASS